IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4048 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MEHBOOB NANABHAI GANDHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4048 of 2004
MR VN BHAGODIA for Petitioner No. 1
MR KL PANDYA AGP for Respondent No. 1
MR KB PUJARA for Respondent Nos. 2 to 4

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 17/08/2004

ORAL JUDGEMENT

1. Rule. Mr. K.L. Pandya, learned A.G.P. appears and waives service of notice of Rule on behalf of the respondent no. 1. Mr. K.B. Pujara, learned advocate also waives service of notice of Rule for the respondents no. 2 to 4. In the facts and circumstances of the case, with the consent of the learned advocates for the parties this petition is taken up for final hearing today.

2. The present petition is filed under Article 227 of the Constitution of India, whereby the petitioner has challenged the demand of charges which is referred in Annexure-E to the memo of the petition as well as the letter issued by the respondent no.2 on 7-4-2004.

3. Learned advocate appearing for the petitioner mainly submitted that there is total demand of Rs.60,19,416/- due to alleged malpractices , noticed on various days visit paid by the respondent no.2's officers at the factory premises of the petitioner. Out of said amount of Rs.60,19,416/-, Rs.3,50,000/- has been already been paid by the petitioner to the respondent no.2. Thus, the amount of Rs.56,69,416/- as per the respondent no.2 (Annexure-A) herein is outstanding amount, is prima facie erroneous and bad in law. In fact, there is no such outstanding amount of whatsoever nature to be paid by the petitioner to the respondent no. 2. Similarly, the respondent no. 2 has issued letter dated 7-4-2004 which is at Annexure-F to the memo of the petition, reveals incorrect figure of outstanding amount. The respondent is multiplying by two, the units revealed by the meter and upon double the units, the respondent no.2 is issuing the bill of electricity. Hence, disconnection of electricity connection of the petitioner by the respondent no. 2 is illegal action and therefore the respondent no. 2 should be directed to restore the electricity connection of the petitioner which is disconnected from 24th Jul, 2001. Thus, there is disconnection of electricity supply because of nonpayment of the aforesaid outstanding amount with effect from 22/24-7-2001. It is also submitted by the learned advocate for the petitioner that as many as 13 civil suits referred to in paragraph no.9 of the petition were preferred by the petitioner and the said suits have been withdrawn and settlement has been arrived at between the petitioner and the respondent no.2 and cheques have been issued in advance and merely because one cheque has been dishonoured the respondent no. 2 has no jurisdiction, power and authority to disconnect electricity connection of the petitioner. As and when the petitioner approached the respondent no.2 for full payment of Rs.60,000/-, the

respondent no. 2 has not accepted the cheque of Rs.60,000/- and therefore the action of the respondent no. 2 of disconnecting electricity connection of the petitioner is illegal and erroneous. Hence, there is failure on the part of the respondent no. 2 in discharging their public duty and hence the writ of mandamus should be issued against the respondent no. 2.

4. Upon issuance of the notice, the respondent no.2 has filed an affidavit-in-reply.

5. Learned advocate appearing for the respondent no.2 submitted as under :

(i) Detailed A/c. has been given vide Annexure-R/3 at page 68 to the memo of the petition, starting from 22-2-2000 to 3-5-2003 which reveals the amount received from the petitioner and at the end of the Annexure-R/3, Rs.11,51,876-51 ps. is shown as outstanding amount and whole A/c. has been given starting from 22-2-2000 and even thereafter there was an arrears.

(ii) In the letter written by the petitioner dated 10-2-2003 Annexure-R/1 Page 60 to the memo of the petition, the petitioner has admitted the outstanding amount of Rs.11.00 lacs to be paid in 23 instalments, each of Rs.60,000/-. The amount admitted, has not been paid so far. (As per para no. 1 of the letter)

(iii) It has also been admitted by the petitioner vide letter dated 10-2-2003 that the petitioner is ready and willing to make payment of Rs.28.00 lacs towards past assessment and prayed that the Board of the respondent no.2 may accept the proposal of the petitioner. Thus, the petitioner has agreed to pay Rs.28.00 lacs for past assessment plus Rs.11.00 lacs against regular energy bill. Thus, the petitioner had agreed to make payment of Rs.39.00 lacs. It was also prayed for by the petitioner to make payment of Rs.39.00 lacs in 3 instalments but the petitioner has failed to make payment of the aforesaid amount of Rs.39.00 lacs. (As per paras 3 & 4 of the letter).

(iv) Consistently there was a prayer vide several letters written by the petitioner to the respondent no. 2 to take lenient view towards arrears and ultimately it was accepted by the respondent no. 2 - Ahmedabad Electricity Company and communicated vide letter dated 7-4-2003 to the petitioner that the petitioner may make payment of Rs.11,51,876-51 ps. plus 25.00 lacs towards full and final settlement of various diversion of energy cases so as to enable the respondent no. 2 to reconnect the supply of electricity of the petitioner. The said letter of the respondent no. 2 is at Annexure-R/2 at Page. 19 and 60 to the memo of the petition. Thus, ample opportunities given by the respondent no.2 which have not been availed by the petitioner and still the petitioner is defaulter.

(v) In Civil Suit No.3220 of 2001 filed by the petitioner, the contention raised by the petitioner is that the respondent no.2 is not correctly calculating units of consumption of electricity. It was the contention of the petitioner in that suit that the respondent no.2 is multiplying by 2, the units consumed by the petitioner for calculating of energy charges. The same contention has also been raised in the memo of the present petition. The aforesaid suit is pending before the City Civil Court, Ahmedabad. In fact, multiplying Factor-2 (two) is not baseless. Every meter has its own multiplying factor. Multiplying factor is revealed by the meter itself. It depends upon internal arrangement of the meter and what is apparently visible as units in figures is not actual measurement of the units. Looking to the multiplying factor of every meter, units apparently revealed by the meter ought to have been multiplied. The petitioner's meter is having multiplying Factor-2 (two) and to arrive at correct consumption of the units, the figure revealed by the meter, ought to have been multiplied by Factor-2. This explanation

has already been given in the said civil suit as well as in para 7 of the affidavit-in-reply to the present petition. Thus, there is no double calculation of units by the respondent no. 2. On the contrary, by multiplying the units revealed by the meter, by multiplying factor, the respondent no. 2 has arrived at correct calculation of units. Multiplying Factor may be one and it may go upto 10. Every meter has its own multiplying factor.

6. I have considered the submissions made by the learned advocates for the parties and perused the papers on record. Looking to the various contentions raised by the learned advocates for the parties, the following are the vital, crystalised factors, necessary for adjudication of this Special Civil Application.

(i) There is long drawn unpaid amount by the present petitioner to the respondent no.2 right from the year 2000 to May 2003 (From Annexure-R/3 to the affidavit-in-reply) to the tune of Rs.11,51,876-51 ps.

(ii) The amount referred to at Annexure-A to the memo of the petition which is of Rs.60,19,416/- and out of which Rs.3,50,000/- has been paid by the petitioner to the respondent no.2. Thus, outstanding amount is of Rs.56,69,416/-. The aforesaid amount of Rs.56,69,416/- is towards assessment of theft of energy and malpractices.

(iii) As per admission of the petitioner vide his letter dated 10-2-2003 outstanding amount of Rs.11.00 lacs has been offered to be paid in 23 monthly instalments, each of Rs.60,000/-, has also not been paid so far.

(iv) It is also admitted by the petitioner vide his letter dated 10-2-2003 at Annexure-R/I to the memo of the petition that the petitioner is ready and wiling to make payment of Rs.28.00 lacs against past assessment (instead of Rs.56,69,416/- plus Rs.11.00 lacs against

regular energy bills. Thus, the petitioner has offered Rs.39.00 lacs to the respondent no. 2, to be paid in three instalments. This amount of Rs.39.00 has also not been paid by the petitioner to the respondent no. 2.

(v) Even after aforesaid admission vide letter dated 10-2-2003 on the part of the petitioner, it appears that still, the petitioner was not ready and willing to make payment of the aforesaid outstanding amount and consistent request has been made by the petitioner vide various letters to the respondent no. 2 to take lenient view towards the petitioner. Ultimately, the respondent no.2 vide their letter dated 7-4-2003 offered Rs.11,51,876-51 ps. plus Rs.25.00 lacs towards full and final settlement of various diversion of energy cases. Thus, the reduced amount has been further reduced, by the respondent no. 2. Initially, outstanding amount was Rs.56,69,416/- plus Rs.11,00,000/-. Instead of this amount, the petitioner offered Rs.28.00 lacs plus Rs.11 lacs. This amount is further reduced by the respondent no. 2 as Rs.25.00 lacs plus Rs.11 lacs. Despite reduction, the petitioner has failed in making payment of reduced amount also. The said latest offer is at Annexure-R/2 at page 67 to the memo of the petition.

(vi) Several cheques issued by the petitioner towards payment of energy charges and towards past arrears referred in page No. 68 onwards to the memo of the petition. There are total five cheques issued which are shown to have been dishonoured. This reveals tendency of the present petitioner in issuance of the cheques and dishonour thereof (Page Nos.68 and 72.

(vii) Number of civil suits have been filed by the petitioner and more than dozen suits have been withdrawn as referred at Page 9 to the memo of the petition. All the said suit are arising from the electricity bill and nonpayment thereof.

(viii) There is multiplication Factor-2 (two) attached with the meter of the petitioner. Therefore, units revealed by the meter, must be multiplied by two for correct calculation of units consumed by the petitioner.

(ix) As per the principle enunciated by the Hon'ble Supreme Court in the case of M/s. Swastik Industries Vs. Maharashtra State Electricity Board, reported in AIR 1997 SC 1101, especially paragraph No. 5 thereof, which reads as under :

"It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it. The right to file a suit is a matter of option given to the licensee, the Electricity Board. Therefore, the mere fact that there is a right given to the Board to file the suit and the limitation has been prescribed to file the suit, it does not take away the right conferred on the Board under Section 24 to make demand for payment of the charges and on neglecting to pay the same. They have the power to discontinue the supply or cut of the supply, as the case may be, when the consumer neglects to pay the charges. The intendment appears to be that the obligations are mutual. The Board would supply electrical energy and the consumer is under under corresponding duty to pay the sum due towards the electricity consumed. Thus the Electricity Board, having exercised that power, since admittedly the petitioner had neglected to pay the bill for additional sum, was right in disconnecting the supply without recourse to filing of the suit to recover the same. The National Commission, therefore, was right in following the judgment of the Bombay High Court and allowing the appeal setting aside the order of the State Commission. Moreover, there is no deficiency of service in making supplementary demand for escaped billing. There may be negligence or collusion by subordinate staff in not properly recording the reading or allowing pilferage of the consumers. That would be deficiency of service under the Consumer Protection Act. We do not find any

illegality warranting interference."

Aforesaid judgment of the Hon'ble Supreme Court empowers the respondent no. 2 to discontinue supply of power of the petitioner, if there is nonpayment of charges by the consumer.

7. For the foregoing reasons, there is no substance in this petition and hence the same fails. Accordingly, the present petition is dismissed with costs quantified at Rs.15,000/-. Rule is discharged. The action of the respondent no. 2 of disconnection of electricity connection of the petitioner is true, correct and legal. There is no error in multiplying the units revealed by the meter of the petitioner by two as multiplying factor for the meter of the petitioner is two. Neither Annexure-A nor Annexure-F is legal. On the contrary, vide Annexure-F, the demanded by the respondent no. 2 (vide Annexure-A) has been reduced, substantially.

8. The amount of costs of Rs.15,000/- has been ordered to be deposited by the petitioner while issuing the notice. The said amount of Rs.15,000/- has already been deposited by the petitioner with the registry of this Court. The respondent no. 2 is hereby permitted to withdraw the said amount of Rs.15,000/- deposited by the petitioner towards the costs. Registry is directed to issue a cheque in favour of the respondent no. 2 of Rs.15,000/- (Rupees Fifteen Thousand only), which has been deposited by the petitioner.

(D.N. Patel, J.)
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